

Senate Bill No. 959

CHAPTER 557

An act to amend Sections 20340 and 20341 of the Public Contract Code, and to amend Sections 120100, 120105, 120220, 120224.1, 120224.3, 120224.4, 120260, 120264, 120300, 120301, 120302, 120351, 120352, 120355, 120400, 120452, 120508, 120540, 120630, and 120631 of, to add Section 120220.5 to, to repeal Sections 120262 and 120353 of, and to repeal and add Sections 120202, 120222, and 120350 of, the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 959, Kehoe. San Diego Metropolitan Transit Development Board.

Existing law, the Mills-Deddeh Transit Development Act, creates the San Diego Metropolitan Transit Development Board, which is authorized to perform certain transportation functions in a portion of the County of San Diego, including planning and constructing exclusive public mass transit guideways. Under existing law, the board is authorized to enter into contracts for the acquisition of goods and services and is required to comply with specified requirements in that contracting process. Existing law authorizes the board to issue revenue bonds and to borrow money in accordance with certain procedures.

This bill would extend various types of benefits to the board that are accorded under existing law to other public agencies. The bill would revise the board's contracting requirements and its responsibilities for planning and constructing exclusive public mass transit guideways, specifying that the board provide input on those matters to the San Diego Association of Governments (SDAG). The bill would name SDAG the designated recipient of federal transit funds and would require the board to administer its transportation funding and its public transit system in conformity with the San Diego Regional Transportation Consolidation Act.

Because the bill would require the board to assume additional responsibilities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 20340 of the Public Contract Code is amended to read:

20340. The provisions of this article shall apply to contracts by the San Diego Metropolitan Transit Development Board, as provided for in Division 11 (commencing with Section 120000) of the Public Utilities Code.

SEC. 2. Section 20341 of the Public Contract Code is amended to read:

20341. (a) Except as provided in subdivision (c), contracts for construction in excess of fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. If the expected construction contract exceeds one thousand dollars (\$1,000) and does not exceed fifty thousand dollars (\$50,000), the board shall seek a minimum of three quotations, either written or oral, that permit prices and other terms to be compared, and the board shall award the contract to the bidder who submitted the lowest quotation.

(b) If no bids are received, the project may be performed by a negotiated contract.

(c) This section does not apply to the Los Angeles County Metropolitan Transportation Authority.

SEC. 3. Section 120100 of the Public Utilities Code is amended to read:

120100. The board at its first meeting, and thereafter annually at the first meeting in January, shall elect a vice chair who shall preside in the absence of the chair. In the event of the absence or inability to act by the chair or vice chair, the chair pro tempore shall preside.

SEC. 4. Section 120105 of the Public Utilities Code is amended to read:

120105. The board shall perform the following duties:

(a) Determine whether to operate exclusive public mass transit guideways or to let contracts for their operation in conformity with state labor laws and subdivision (d) of Section 120508.

(b) Determine the means to finance the operation of public mass transit guideways.

(c) Adopt an annual budget and fix the compensation of its officers and employees.

(d) Adopt an administrative code, by ordinance, that shall prescribe the powers and duties of board officers, the method of appointment of board employees, and methods, procedures, and systems of operation and management of the board. The administrative code shall also provide for, among other things, the appointment of a general manager or chief executive officer, and the organization of the employees of the board into units for finance and administration, planning and operations, property

acquisition and management, and community relations, and other units as the board deems necessary.

(e) Cause a postaudit of the financial transactions and records of the board to be made at least annually by a certified public accountant.

(f) Adopt all ordinances and make all rules and regulations proper or necessary to regulate the use, operation, and maintenance of its property and facilities, including its public transit systems and related transportation facilities and services operating within its area of jurisdiction, and to carry into effect the powers granted to the board.

(g) Appoint such advisory commissions as it deems necessary.

(h) Do any and all things necessary to carry out the purposes of this division.

SEC. 5. Section 120202 of the Public Utilities Code is repealed.

SEC. 6. Section 120202 is added to the Public Utilities Code, to read:

120202. (a) All of the privileges, immunities from liability, and exemptions from laws, ordinances, and rules, and all pension, relief, disability, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees of a public agency when performing their respective functions shall apply to employees of the board, and to any nonprofit public benefit corporation of which the board is the sole member.

(b) All claims for money or damages against the board or its employees, and against any nonprofit public benefit corporation of which the board is the sole member or the employees of that corporation, shall be governed by Part 1 (commencing with Section 810), Part 2 (commencing with Section 814), Part 3 (commencing with Section 900), and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code applicable to public agencies and their employees, or by other statutes or regulations expressly applicable thereto.

SEC. 7. Section 120220 of the Public Utilities Code is amended to read:

120220. The board may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and save harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

SEC. 8. Section 120220.5 is added to the Public Utilities Code, to read:

120220.5. The board may provide and maintain by contract with a public agency or by other means, a security force to enforce its regulations, to preserve and protect any public transit system or project financed pursuant to this division, and to preserve and protect the public peace, health, and safety with respect to its system or projects. Alternatively, the board may contract with a private patrol operator licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, with the county sheriff and municipal police departments within the areas described in Section

120054, and with other transit development boards for security, police, and related services.

SEC. 9. Section 120222 of the Public Utilities Code is repealed.

SEC. 10. Section 120222 is added to the Public Utilities Code, to read:

120222. (a) The Legislature finds and declares that a compelling interest exists in ensuring that all federal, state, local, and private funds available to the board are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the board shall have the authority to establish and use a flexible contracting process to maximize its efficient use of public funds.

(b) Except in cases when an article of a specified brand or trade name is the only article that will properly meet the needs of the board or in an emergency declared by the vote of two-thirds of the membership of the board, all contracts for the acquisition or lease of materials, supplies, or equipment in an amount of one hundred thousand dollars (\$100,000), or in excess of that amount as authorized by the board, shall be made or entered into with the lowest responsible bidder meeting specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid. When the expected purchase amount of the contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (\$100,000), the board shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(c) Except in cases of an emergency declared by the vote of two-thirds of the membership of the board, the board shall for all contracts for the acquisition of services that exceed one hundred thousand dollars (\$100,000), that will not be performed by an entity described in Section 120221.5, and that are not within the category of services defined in Section 4525 of the Government Code, solicit bids in writing and award the contract in a competitive procurement process that is in the best interest of the board, including, but not limited to, a negotiated procurement that may or may not evaluate price as a consideration. When the expected amount of the service contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (100,000), the board shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(d) The board shall award contracts for architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management services that are in excess of one hundred thousand dollars (\$100,000) in accordance with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Notwithstanding any other provisions of this chapter, the board may use any procurement method authorized for state or local agencies under state or federal law, including, but not limited to, a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with

Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The board shall maintain acquisition and contracting guidelines and comply with those guidelines in the procurement of all goods and services.

(f) Provisions in any federally funded contract concerning disadvantaged business enterprises that are in accordance with the request for proposals shall not be subject to negotiation with the successful bidder.

SEC. 11. Section 120224.1 of the Public Utilities Code is amended to read:

120224.1. (a) Upon determining that immediate remedial measures to avert or alleviate damage to, or to repair or restore damaged or destroyed property of, the board are necessary in order to insure that the facilities of the board are available to serve the transportation needs of the general public or to comply with any state or federal regulation with respect to the operation of public transportation services, and upon determining that available remedial measures, including procurement in compliance with Sections 120222, and 120223, are inadequate, the general manager or chief executive officer may authorize the expenditure of money previously appropriated by the board specifically for the direct purchases of goods and services, without observance of the provisions of those sections.

(b) The general manager or chief executive officer, after the expenditure authorized under subdivision (a) has been made, shall submit to the board a full report explaining the necessity for that action.

SEC. 12. Section 120224.3 of the Public Utilities Code is amended to read:

120224.3. Notwithstanding Section 120222, the board may direct the purchase of any supply, equipment, or materials without observance of any provision requiring contracts, bids, or advertisements upon a finding by two-thirds of all members of the board that there is only a single source of procurement therefor and that the purchase is for the sole purpose of duplicating, repairing, or replacing supply, equipment, or materials that are in use, including upgrades or migrations of proprietary intellectual property.

SEC. 13. Section 120224.4 of the Public Utilities Code is amended to read:

120224.4. (a) A person who submits, or who plans to submit, a proposal in response to a procurement solicitation may protest any acquisition conducted in accordance with Sections 120222 and 120223 as follows:

(1) Protests based on the content of the procurement solicitation shall be filed with the board within 10 calendar days after the procurement solicitation is first advertised. The general manager or the chief executive officer, or the designee of the general manager or chief executive officer, shall issue a written decision on the protest prior to opening of the procurement solicitation. A protest may be renewed by refiling the protest with the board within 15 calendar days after the mailing of the notice of the intent to award.

(2) Any bidder may protest the intent to award on any ground not based upon the content of the procurement solicitation by filing a protest with the board within 15 calendar days after the mailing of the notice of the intent to award.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the board prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation.

(b) The decision of the protest by the board shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

SEC. 14. Section 120260 of the Public Utilities Code is amended to read:

120260. The board shall provide input to the San Diego Association of Governments on the planning and construction of exclusive public mass transit guideways in the area under its jurisdiction in conformance with the California Transportation Plan and the regional transportation plan developed pursuant to Chapter 2.5 (commencing with Section 65080.1) of Division 1 of Title 7 of the Government Code.

SEC. 15. Section 120262 of the Public Utilities Code is repealed.

SEC. 16. Section 120264 of the Public Utilities Code is amended to read:

120264. The transit development board may acquire, construct, maintain, and operate (or let a contract in conformity with state labor laws and subdivision (d) of Section 120508 to operate) public transit systems and related transportation facilities and services as it deems necessary to carry out the purposes of this division in conformity with, and to the extent provided in, the San Diego Regional Transportation Consolidation Act (Chapter 3 (commencing with Section 132350) of Division 12.7). The various systems, facilities, and services may be administered by the transit development board under the name of the San Diego Metropolitan Transit System.

SEC. 17. Section 120300 of the Public Utilities Code is amended to read:

120300. The San Diego Association of Governments that includes the area of the board shall be responsible for long-term transportation system planning in that area.

The planning shall be directed to, among other things:

- (a) Identification of corridors of travel.
- (b) Definition of the transportation problems of each corridor.
- (c) Definition of the transportation goals for each corridor.
- (d) Definition of land use goals, with the concurrence of affected local jurisdiction, to be supported by transportation investment decisions in each corridor.

- (e) Recommendation of priority corridors for guideway development.
- (f) Recommendation of the mix of alternative transportation modes appropriate for deployment in light of transportation needs and goals for each corridor.
- (g) Recommendation of environmental, economic, energy, and social policies that should guide transportation investment decision within corridors.

SEC. 18. Section 120301 of the Public Utilities Code is amended to read:

120301. With respect to the area under its jurisdiction, the board shall be responsible for operational planning, which includes all planning and monitoring necessary for the operation, implementation, modification, and elimination of public transportation services operated by the board.

SEC. 19. Section 120302 of the Public Utilities Code is amended to read:

120302. Notice of the time and place of the public hearing by the board shall be published pursuant to Section 6061 of the Government Code, and shall be published not later than the 15th day prior to the date of the hearing.

The materials for the public hearing shall be available for public inspection at least 15 days prior to the hearing.

SEC. 20. Section 120350 of the Public Utilities Code is repealed.

SEC. 21. Section 120350 is added to the Public Utilities Code, to read:

120350. The provisions of Article 6 (commencing with Section 120350) and Article 7 (commencing with Section 120400) shall be implemented in conformity with, and subject to, the San Diego Regional Transportation Consolidation Act (Chapter 3 (commencing with Section 132350) of Division 12.7).

SEC. 22. Section 120351 of the Public Utilities Code is amended to read:

120351. The designated recipient for purposes of Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code shall be the San Diego Association of Governments, and it shall be responsible for allocating federal transit funds to eligible recipients. The board shall prepare the program of projects for transit capital and operating assistance projects in its area of jurisdiction for receipt of federal funds. The San Diego Association of Governments shall allocate the funds to the board to fund its projects. If a dispute regarding the allocation of funds arises between the board and the North San Diego County Transit Development Board, the two boards shall negotiate in good faith to resolve the dispute. If the negotiation does not result in resolving the dispute prior to adoption of the annual regional transportation improvement program, the San Diego Association of Governments shall resolve the dispute and allocate the funds accordingly.

SEC. 23. Section 120352 of the Public Utilities Code is amended to read:

120352. The board may receive any money pursuant to Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code for mass transit purposes, and reallocate that money for those purposes in accordance with federal law and rules and regulations.

SEC. 24. Section 120353 of the Public Utilities Code is repealed.

SEC. 25. Section 120355 of the Public Utilities Code is amended to read:

120355. The board may take all action necessary to obtain funding available pursuant to Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code.

SEC. 26. Section 120400 of the Public Utilities Code is amended to read:

120400. The board may accept contributions, grants, or loans from any public agency or the United States or any department, instrumentality, or agency thereof, for the purpose of financing the planning, acquisition, construction, or operation of public transportation services, and may enter into contracts and cooperate with, and accept cooperation from, any public agency or the United States, or agency thereof, in the planning, acquisition, construction, or operation of any of those public transportation services in accordance with any legislation that Congress or the Legislature of the State of California may have heretofore adopted or may hereafter adopt, under which aid, assistance, and cooperation may be furnished by the United States or any public agency in the planning, acquisition, construction, or operation of any of those public transportation services. The board may do any and all things necessary in order to avail itself of this aid, assistance, and cooperation under any federal or state legislation now or hereafter enacted.

SEC. 27. Section 120452 of the Public Utilities Code is amended to read:

120452. Violation of any ordinance, rule, or regulation enacted by the board prohibiting the unauthorized entering into, climbing upon, holding onto, or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways owned or controlled by the board, is an infraction punishable by a fine not exceeding fifty dollars (\$50), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

SEC. 28. Section 120508 of the Public Utilities Code is amended to read:

120508. (a) This article also applies to the employee relations of employees of a nonprofit entity that operates public mass transit services and that is solely owned by the board. For employee relations regarding these employees, the term “board,” as used in this article, means the board and the board of directors of the nonprofit entity as the joint employer of the employees.

(b) The board may, at any time in its sole discretion, abolish any nonprofit entity or merge any nonprofit entity with another nonprofit entity or with the board.

(c) Upon abolishing or merging a nonprofit entity pursuant to subdivision (b), the board shall become the sole employer of the employees of the nonprofit entity and shall assume sole responsibility to observe all existing labor contracts established and maintained pursuant to this article.

(d) Except as may be agreed upon through the collective bargaining process, nothing in this section shall prohibit or limit the right of the board to contract with common carriers of persons operating under a franchise, license, or other agreement. Any provision in an existing collective bargaining agreement made applicable to the board in its capacity as a joint employer with a nonprofit entity pursuant to subdivision (a) or sole successor employer pursuant to subdivision (b) that is intended to prohibit or limit the right of a nonprofit entity to contract out covered bargaining unit services to another common carrier of persons shall not be binding upon the board with respect to any contract for services entered into, renewed, or extended by the board prior to January 1, 2004, and thereafter shall apply only to contracts for bargaining unit services covered by an existing collective bargaining agreement assumed by or binding upon the board as a joint employer unless otherwise agreed upon through the collective bargaining process. The amendments to this subdivision made by Senate Bill 959 of the 2005-06 Regular Session are intended solely to clarify existing law and shall not be interpreted either to enlarge or contract the board's right to contract out for public transportation services.

SEC. 29. Section 120540 of the Public Utilities Code is amended to read:

120540. It shall be a condition of the operation of any transit facility owned or controlled by the board that Section 5333 of Title 49 of the United States Code shall be given effect to the extent required by law.

SEC. 30. Section 120630 of the Public Utilities Code is amended to read:

120630. The board may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by, or on behalf of, the board, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the board.

SEC. 31. Section 120631 of the Public Utilities Code is amended to read:

120631. The board is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code). The term "enterprise," as used in the Revenue Bond Law of 1941, for all purposes of this article, includes the transit system or any or all transit facilities and all

additions, extensions, and improvements thereto authorized to be acquired, constructed, or completed by the board.

The board may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by, or on behalf of, the board or, in the alternative, the board may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities.

Nothing in this article prohibits the board from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the board may determine.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make needed changes to the San Diego Metropolitan Transit Development Board as soon as possible, it is necessary that this act take effect immediately.